

ARTICLE II. LEGISLATIVE BRANCH

Section 2.01. Legislative powers.

The legislative power of the county is vested in the board of county commissioners of Shelby County, hereinafter called the legislative branch. The legislative power includes all lawful authority to adopt ordinances and resolutions governing the operation of government or regulating the conduct and affairs of the residents of the county, to adopt the county budget, to fix the county tax rate, to make appropriations of county funds for all legal purposes, and to exercise all other authority of a legislative nature which is vested in the county by the Constitution, general statutes, or special, local or private acts of the General Assembly or this charter. The legislative branch may adopt any ordinance or resolution which is not in conflict with the Constitution or general laws of the State of Tennessee, or this charter.

NOTES:

1. Name--Ch. 934, Acts 1978 changed all references to county quarterly court to county legislative body. T.C.A. § 5-5-101 [5-5-101].

2. Name--Ch. 165, Pvt. 1979--changed name to board of county commissioners of Shelby County.

3. Authority--T.C.A. § 5-5-101 provides:

"(a) The county legislative body is established as a basic legislative unit of each county of this state; provided that the provisions of this subsection (a) shall not apply to counties that have already adopted the metropolitan form of government.

"(b) Effective September 1, 1978, except in any county organized under the consolidated government provisions of the Tenn. Const., article XI, § 9, the quarterly county court, county council, and any other forms of county legislative bodies are abolished and all legislative powers that remained with such court, council, and other forms of legislative bodies are hereby vested in the county legislative body. The county legislative body is further vested with all legislative powers and duties vested in justices of the peace prior to May 11, 1978.

"(c) References to the quarterly county court, county council or other county legislative body appearing elsewhere in this code shall be deemed references to the county legislative body.

"(d) References to the magistrates, justices of the peace, members or membership of such court, council or body appearing elsewhere in this code shall be deemed references to the members of the county legislative body."

Section 2.02. Other powers.

A. The legislative branch is vested with all other powers of the county not specifically, or by necessary implication, vested in some other official of the county by the Constitution or by statute not inconsistent with this charter. In exercising its legislative functions, the legislative branch may employ, subject to budgeting limitations, special counsel, assistants, and other employees. However, neither the legislative branch nor the chairman of the legislative branch shall exercise executive, administrative or judicial powers or perform any functions of the mayor-county commission government delegated or assigned by the terms of this charter to other offices, branches or departments of county government. Whenever any public or private act of the state purports to authorize the

county court or county commission or its chairman to perform any administrative or executive act or function, then such act or function shall be performed by the county mayor.

B. The county commission shall provide annually for an independent audit of the accounts and other evidences of financial transactions of the county and of every county office and such special audits as deemed necessary. This audit shall be made by a certified public accountant or by a firm of certified public accountants designated by the board of county commissioners, and no individual auditor or member of an auditing firm so designated shall have any personal financial interest, direct or indirect, in the fiscal affairs of the county or of any of its offices. The designated certified public accountants shall be qualified by training and experience and shall have sufficient staff to perform the audit. The individual certified public accountant or firm of certified public accountants may be employed to perform the audit for the term set by resolution.

C. By ordinance, the board of county commissioners shall establish purchasing procedures and/or rules and/or regulations for all purchases, sales and contracts for services through competitive bids or otherwise. Such ordinance may provide that the county mayor may promulgate rules and regulations to administer the purchasing procedures established by ordinance. The purchasing rules and regulations shall apply to all county officials elected pursuant to this charter and shall only apply to clerks of courts, if not contrary to state law.

D. The board of county commissioners shall have the sole power to grant franchises by ordinance, provided no such franchise shall be granted for a period to exceed 30 years.

E. No sale of real property or any interests therein shall be valid unless approved by the resolution of the board of county commissioners.

F. By resolution or other method provided by law, the board of county commissioners shall have the power to borrow money and to issue bonds and notes and other evidences of indebtedness of the county.

NOTES:

1. Under prior law, the county court consisted of the justices of the peace. In addition, when sitting as the county court, the justices had authority over many matters now assigned to probate court. The probate jurisdiction was removed by Ch. 86, Acts 1870. The justice of the peace jurisdiction was removed to general sessions court by Ch. 123, Pvt. 1941. Members of the county commission retain the power to perform marriages pursuant to T.C.A. § 36-3-301. See T.C.A. § 5-5-101.

2. The chairman of the county court had certain administrative functions under prior law, which are abolished here.

3. See Ch. 486, Pvt. 1917, clerical assistance to county court. See § 4-2 of the Shelby County Code of Ordinances, clerical assistance to board of county commissioners.

4. In its interpretation of Chapter 260 of the Private Acts of 1974 ("Restructure Act"), the Tennessee Court of Appeals, in the case of Shelby County v. Blanton, 595 S.W.2d 72 (Tenn. Ct. App. 1978), held as follows: "the signing of bonds, tax anticipation notes, and bond anticipation notes is an integral part of the legislative function of issuing bonds, and in the

absence of a specific provision giving the county mayor authority to sign those instruments that power will not be extended to that official by implication." The county mayor's authority to sign bonds and notes is set forth in § 3.03K of the Shelby County Charter.

5. Subsections B and C -- Amended pursuant to voter referendum of 8-7-08, effective 9-1-8 (Ord. No. 361, 6-2-08).

6. Subsection E - Leases of county-owned real property must be approved by resolution of the board of county commissioners. (Op. Co. Atty. No. 08-032, 8-27-08).

Section 2.03. Membership and election.

A. The board of county commissioners of Shelby County shall be the legislative branch of Shelby County government, whose members shall be elected by the people for such terms and from such districts as may from time to time be provided by law.

B. The first board of county commissioners under this charter shall consist of 11 members elected from such districts as provided in section 7.11 of this charter and thereafter as the commission may provide. The number of commissioners shall not be less than nine nor more than 25 and the board of commissioners may alter the number of commissioners and the boundaries of districts only by ordinance, provided that no change shall be made in either the number of commissioners or their districts after January 1 of the year in which elections for the commission are to be held.

C. No person shall be eligible to serve as a member of the board of county commissioners unless having attained the age of 18 and are registered voters in the district from which they seek election on the date they filed their nominating petition and have been residents of the county for one year prior to the election.

D. The board of county commissioners shall adopt its own rules of order and procedure. In all elections to fill positions, the board of county commissioners shall adopt a procedure providing for nominations from the commissioners and the public and a roll call vote of the commission in which each commissioner shall vote for one nominee by name. All persons shall be elected by a majority vote of the commission. If no nominee receives a majority on the first vote, the commission shall hold subsequent votes considering only those nominees receiving more than such number of votes as the commission may determine, with said number determined in advance by resolution.

E. In any election to be filled by the board of county commissioners, if any member of the board of county commissioners accepts the nomination as a candidate for any countywide office filled by a vote of the people or the county commission, such member shall automatically become disqualified to vote to fill that office. Acceptance of a nomination by a member of said body will mean that the nomination [was made in the presence of the nominee, and the nominee allows nominations to] cease and a roll call begun upon the list of nominees without removing that said name from nomination. If a member's name is placed in nomination, the chairman of the board of county commissioners shall specifically ask that person if they desire their name to remain in nomination prior to the vote beginning on the list of nominees. If the nominee states "yes," then the nominee shall take a seat in the public area of the meeting chambers. If the member is elected, his office on the board of county commissions shall be declared immediately vacant.

F. No member of the board of county commissioners shall be eligible to hold any other local, county, state or federal compensated elective office so long as they hold the office of Shelby County Commissioner. If a county commissioner assumes another compensated elected office, the county commissioner shall vacate the county [commission] office within ninety (90) days and the vacancy shall be filled in accordance with Article II, Section 2.11 herein. Provided, however, anyone who currently holds another compensated elected office may run for the county commission so long as, if elected, that person resigns the existing elected office within ninety (90) days of his election as a county commissioner. This amendment shall become effective on August 31, 1994, and shall be applicable to all those commissioners taking office on that date and thereafter.

G. No county mayor nor any member of the board of county commissioners shall be eligible to be elected to, or hold the office of, county mayor or county commissioner for more than two consecutive four-year terms. Provided, however, if an individual is appointed to fill an unfilled term either for mayor or county commissioner, this term shall not be counted as part of the two consecutive elected terms.

NOTES:

1. Subsection F--Added pursuant to voter referendum of 8-4-94 (Ord. No. 136, 2-28-94).
2. Subsection G--Added pursuant to voter referendum of 11-8-94 (voter petition).
3. Subsection E -- Amended pursuant to voter referendum of 8-7-08, effective 9-1-08 (Ord. No. 361, 6-2-08).

Editor's note: The Tennessee Supreme Court, on March 29, 2006, in the case of *Bailey, et al v County of Shelby*, 188 S.W. 3d 539 (Tenn. 2006), held 1) that the term limit provision contained in Section 2.03G of the Shelby County Charter is authorized by T.C.A. § 5-1-210(4) and 2) that T.C.A. § 5-1-210(4) does not violate Art. VII, § 1 of the Tenn. Constitution.

Section 2.04. Commissioner's salary and expense.

A. The board of county commissioners may set their own salary and expense accounts. The compensation allowed any member of the county board of commissioners, whether salary, expense or otherwise, shall not be raised during their term of office, and shall not be increased or decreased for the next term of office after January 1 of the year in which the county commission is to be elected for said next term.

B. Notwithstanding Article II, Section 2.06C(3)(e) herein, the compensation of the chairman of the board of county commissioners shall be determined annually by resolution and shall be set prior to the election of the chairman.

NOTES:

1. Subsection B -- Amended pursuant to voter referendum of 8-7-08, effective 9-1-08 (Ord. No. 361, 6-2-08).

Section 2.05. Quorum.

A quorum for the purpose of conducting business shall be a majority of the membership of the board of commissioners.

Section 2.06. Ordinances and resolutions.

A. Generally.

(1) The legislative branch shall exercise its legislative authority by resolution, ordinance, or emergency ordinance as hereinafter set forth.

(2) No such ordinance, resolution or emergency ordinance shall be opposed to the general laws of this state and no such resolution, ordinance or emergency ordinance shall interfere with the local affairs of any municipality within the boundary of Shelby County.

(3) Resolutions, ordinances and emergency ordinances shall be adopted according to the forms and formalities set forth below.

(4) An ordinance may provide suitable penalties or fines or both for the violation thereof as provided by law.

B. Resolutions. All resolutions shall be adopted upon receiving a majority vote of the membership of the county board of commissioners, except as otherwise required by general law for the issuance of bonds, notes and other evidences of indebtedness of the county, and shall become effective in accordance with section 2.07 of this charter.

C. Ordinances.

(1) Every ordinance shall be read on three different days in open session of the legislative body before its adoption, and not less than one week shall elapse between first and third readings. Any ordinance not so read shall be null and void. The Shelby County commission has established a procedure to read the caption of an ordinance on the first and second readings and an ordinance in its entirety on the third reading, provided however, for any ordinance that is longer than two typewritten pages, the county commission may adopt a procedure to read a summary of said ordinance in lieu of reading the entire ordinance. Copies of such ordinances shall be available during regular business hours at the office of the county clerk or such other officer as may be designated by law and during sessions in which the ordinance has its second and third readings.

(2) In all ordinances adopted on third reading under this section, the vote shall be determined by yeas and nays and the names of the members voting for or against an ordinance shall be entered upon the journal.

(3) All ordinances shall be adopted upon receiving a majority vote of the membership of the board of county commissioners, except for ordinances dealing with the following subjects, which shall be adopted on receiving a two-thirds vote of the membership of the board of county commissioners:

(a) Any proposal which amends this charter.

(b) Any proposal which changes the purchasing procedures of Shelby County government or any agency or authority subject to the county purchasing ordinances.

(c) Any proposal setting the county property tax rate at a rate ten percent or more above the previous year's tax rate.

(d) Any proposal which imposes a fine or imprisonment as punishment for a violation thereof.

(e) Any proposal which increases the salary and/or expenses of the county mayor, board of county commissioners, county school board members or any elected county charter officer.

(f) Any proposal which changes the number of county commissioners or their district lines.

(g) Any proposal which grants a franchise as set forth in section 2.02(D).

(h) Any proposal ratifying the contracting of services between the county with various municipalities and agencies pursuant to section 3.03(E).

(4) An ordinance shall not take effect until 15 days after its passage, except in case of an emergency ordinance and as provided for in Article V, Section 5.05B herein.

(5) No ordinance making a grant, removal or extension of a franchise or other special privilege, or regulating the rate to be charged for its service by any public utility shall ever be passed as an emergency ordinance. No ordinance shall be amended except by a new ordinance.

(6) The county clerk or such other officer as may be designated by law shall number and compile in an ordinance book all ordinances and shall preserve such book in that office.

(7) Ordinances shall be enforced by the chief law enforcement officer of the county unless an ordinance otherwise provides. Persons charged with violation of an ordinance, in whole or in part, shall be tried in the court of general sessions. Any fines or penalties or both, and court costs collected for such violation, shall be paid into the county general fund unless the ordinance or state law otherwise provides.

D. Emergency ordinances.

(1) An emergency ordinance may become effective upon the date of its final passage, provided it shall contain the statement that an emergency exists and shall specify with distinctness the facts and reasons constituting such an emergency.

(2) The unanimous vote of all members of the legislative body present shall be required to pass an emergency ordinance. However, at least two-thirds of the legally constituted body must be present and voting.

(3) An emergency ordinance shall be so designated in its caption and shall be published in a newspaper of general circulation prior to its second reading.

E. Caption, subjects. No ordinance or resolution shall become effective which embraces more than one subject, the subject to be expressed in the title. All ordinances and resolutions which repeal, revise or amend former ordinances or resolutions or acts of the county shall recite in their caption the title or substance of the ordinance or resolution or act repealed, revised or amended.

F. Delivery of copies.

(1) It shall be the duty of the county clerk or such other officer as may be designated by law to deliver to the county mayor a true and attested copy of all ordinances or resolutions within four days of the final passage.

(2) Within 30 days of final passage, the county clerk or such other officer as may be designated by law shall cause to be delivered to the county attorney a certified copy of every ordinance or resolution.

(3) The county clerk or such other officer as may be designated by law shall maintain an up-to-date record of all ordinances and resolutions and furnish a true copy to interested persons for a reasonable fee.

NOTES:

1. See Note 1 to section 1.02; Davidson County v. Kirkpatrick, 150 Tenn. 546, 266 S.W. 107 (1924).

2. Part of paragraph F(1) was derived originally from Ch. 199, Pvt. 1976, amended by Ch. 253, Pvt. 1980, to change county clerk to clerk of legislative body.

3. Subsection C(1) - Added third sentence pursuant to voter referendum of 11-8-88 (Ord. No. 29, 7-11-88)

4. Subsections C(3)(e) and C(4) -- Amended pursuant to voter referendum of 8-7-08, effective 9-1-08 (Ord. No. 361, 6-2-08).

Section 2.07. Mayor signature and veto.

A. Every ordinance and resolution except emergency ordinances of the board [of] county commissioners shall be submitted to the county mayor. If the county mayor signs it, the ordinance or resolution shall become effective as provided in section 2.06 of the charter or at a later date if the ordinance or resolution so provides.

B. If the county mayor vetoes the ordinance or resolution, it shall be returned to the board of county commissioners for action on the veto. A resolution or ordinance shall become effective upon receiving a vote of at least a majority plus one, except in the case of ordinances requiring a two-thirds vote pursuant to section 2.06(C)(3), which shall require a vote of two-thirds of the board of county commissioners. Such passage must take place within 30 days of receiving the county mayor's message of veto.

C. If the county mayor fails either to sign or veto an ordinance or resolution and to report this action to the board of county commissioners within ten days after the ordinance or resolution is submitted to him, the mayor shall have no further power to veto the ordinance or resolution and it shall become effective without the signature upon the expiration of the ten-day period or at a later date if the ordinance or resolution so provides.

Section 2.08. Election of chairman, chairman pro tempore.

The board of county commissioners, at its first session on or after September 1, 1986, and annually thereafter, shall elect from its membership a chairman, chairman pro tempore, and such other officers as deemed necessary. The election procedures shall follow those established pursuant to section 2.03(D), except that this shall not be an election in which the public can make nominations.

Section 2.09. Removal of commissioner.

A commissioner may be removed from office according to state law.

Section 2.10. Chairman's designee authority.

The chairman shall have the right to serve individually or to appoint from the other commissioners and assistants of the board of county commissioners, in writing, a designee, to serve in place and stead of the chairman on any board or commission of which the chairman is a member by law and said designee shall have all powers, including the power to vote, as are conferred upon the chairman. Any designee appointed by the chairman under the provisions of this subsection [sic] shall be appointed to serve in that capacity for at least one year, or the remainder of the term of office of the chairman, whichever is less. During such periods of appointments, either the specified designee or the chairman may exercise the voting powers granted by this subsection. However, at any meeting attended by the chairman, only the chairman shall exercise the voting power.

Section 2.11. Vacancy.

In the event of a vacancy in the office of commissioner, the remaining commissioners shall fill said vacancy with a person meeting the qualifications for said position, who shall hold office until the next general election or special election conducted in the commission district. The person elected in such election shall serve the remainder of the unexpired term.

Section 2.12. Approval of nominations.

All nominations by the mayor for any board, commission, agency, authority, chief administrative officer, county attorney, public defender, or divorce referee shall be subject to the approval and consent by resolution of the board of county commissioners.

Section 2.13. Recodifications.

The legislative branch shall, at least once every five years, cause to be prepared a recodification of all ordinances which are continued in force, together with this charter and all amendments thereto. The recodification shall be reproduced in pamphlet or book form and shall be made available to any person desiring a copy for which a reasonable fee shall be charged. Fees may be charged for annual revisions. After adoption of the Code, each ordinance of general application shall be adopted as a numbered section or sections of the Code. All new ordinances shall be published annually as an appendix to the Code.

NOTES:

1. This is the authority for this volume. See Note 1 to Section 1.02.